

(b) The County may terminate the Contract upon five (5) days written notice by the County or its authorized agent to the Provider for Provider's failure to provide the services specified under this Contract.

(c) This Contract may be terminated by either party by giving thirty (30) days written notice to the other, before the effective date of termination. In the event of such termination, the Provider shall be entitled to receive just and equitable compensation for any satisfactory work performed as of the termination date; however, the Provider shall not be reimbursed for any anticipatory profits that have not been earned as of the date of termination.

(d) All work accomplished by Provider prior to the date of such termination shall be recorded and tangible work documents shall be transferred to and become the sole property of the County prior to payment for services rendered.

(e) Notwithstanding the above, the Provider shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of the Contract by the Provider and the County may withhold any payments to Consultant for the purpose of setoff until such time as the exact amount of damages due the County from the Provider is determined.

5. Subcontracting, Assignment Or Transfer. Any subcontracting, assignment, delegation or transfer of all or part of the rights, responsibilities, or interest of either party to this Contract is prohibited unless by written consent of the other party. No subcontracting, assignment, delegation or transfer shall relieve the Provider from performance of its duties under this contract. The County shall not be responsible for the fulfillment of the Provider's obligations to its transferors or sub-providers. Upon the request of the other party, the subcontracting, assigning, delegating or transferring party shall provide all documents evidencing the assignment.

6. Conflict Of Interest. The Provider covenants that it has no public or private interest, and will not acquire directly or indirectly any interest which would conflict in any manner with the performance of its services. The Provider warrants that no part of the total contract amount provided herein shall be paid directly or indirectly to any officer or employee of the County as wages, compensation, or gifts in exchange for acting as officer, agent, employee, sub-provider to the Provider in connection with any work contemplated or performed relative to this Contract.

7. Covenant Against Contingent Fees. The Provider warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the Provider, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Provider any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, the County will have the right to recover the full amount of such fee, commission, percentage, brokerage fee, gift, or other consideration.

8. Employment of County Workers. The Provider will not engage, on a full or part-time, or other basis during the period of the Contract, any professional or technical personnel who are or have been at any time during the period of the Contract in the employ of the County.

9. Arbitration. Any dispute concerning a question of fact in connection with the work not disposed of by agreement between the Consultant and the County will be referred to the Shelby County Contract Administrator or his/her duly authorized representative, whose decision regarding same will be final.

10. General Compliance with Laws. (a) If required, the Provider shall certify that it is qualified and duly licensed to do business in the State of Tennessee and that it will take such action as, from time to time, may be necessary to remain so qualified and it shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

(b) The Provider is assumed to be familiar with and agrees that at all times it will observe and comply with all federal, state, and local laws, ordinances, and regulations in any manner affecting the conduct of the work. The preceding shall include, but is not limited to, compliance with all Equal Employment Opportunity laws, the Fair Labor Standards Act, Occupational Safety and Health Administration (OSHA) requirements, the Americans with Disabilities Act (ADA), and all state and local laws, rules and regulations pertaining to electrical requirements of residential construction and renovation.

(c) This Contract will be interpreted in accordance with the laws of the State of Tennessee. By execution of this contract the Provider agrees that all actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this contract will be instituted and litigated in the courts of the State of Tennessee, located in Shelby County, Tennessee, and in no other. In accordance herewith, the parties to this contract submit to the jurisdiction of the courts of the State of Tennessee located in Shelby County, Tennessee.

11. Nondiscrimination. The Provider hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Provider on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Provider shall upon request show proof of such nondiscrimination, and shall post in conspicuous places available to all employees and applicants notices of nondiscrimination.

12. Entire Agreement. This Contract contains the entire Contract of the parties and there are no other promises or conditions in any other Contract whether oral or written. This Contract supersedes any prior written or oral Contracts between the parties.

13. Amendment. This Contract may be modified or amended, only if the amendment is made in writing and is signed by both parties.

14. Severability. If any provision of this Contract is held to be unlawful, invalid or unenforceable under any present or future laws, such provision shall be fully severable; and this Contract shall then be construed and enforced as if such unlawful, invalid or unenforceable provision had not been a part hereof. The remaining provisions of this Contract shall remain in full force and effect and shall not be affected by such unlawful, invalid or unenforceable provision or by its severance here from. Furthermore, in lieu of such unlawful, invalid, or unenforceable provision, there shall be added automatically as a part of this Contract a provision as similar in terms to such unlawful, invalid or unenforceable provision as may be possible, and be legal, valid and enforceable.

15. No Waiver of Contractual Right. No waiver of any term, condition, default, or breach of this Contract, or of any document executed pursuant hereto, shall be effective unless in writing and executed by the party making such waiver; and no such waiver shall operate as a waiver of either (a) such term, condition, default, or breach on any other occasion or (b) any other term, condition, default, or breach of this Contract or

of such document. No delay or failure to enforce any provision in this Contract or in any document executed pursuant hereto shall operate as a waiver of such provision or any other provision herein or in any document related hereto. The enforcement by any party of any right or remedy it may have under this Contract or applicable law shall not be deemed an election of remedies or otherwise prevent such party from enforcement of one or more other remedies at any time.

16. Matters To Be Disregarded. The titles of the several sections, subsections, and paragraphs set forth in this contract are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this contract.

17. Subject To Funding. This Contract is subject to annual appropriations of funds by the Shelby County Government. In the event sufficient funds for this Contract are not appropriated by Shelby County Government for any of its fiscal period during the term hereof, then this Contract will be terminated. In the event of such termination, the consultant shall be entitled to receive just and equitable compensation for any satisfactory work performed as of the termination date.

18. Travel Expenses. All travel expenses payable under this Contract shall be in accordance with the County Travel Policy and Procedures. This includes advance written travel authorization, submission of travel claims, documentation requirements, and reimbursement rates. No travel advances will be made by the County.

19. Incorporation of Other Documents. (a) Provider shall provide services pursuant to this Contract in accordance with the terms and conditions set forth within the Shelby County Request for the Shelby County Purchasing Department and incorporated herein by reference.

(b) It is understood and agreed between the parties that in the event of a variance between the terms and conditions of this Contract and any amendment thereto and the terms and conditions contained either within the Request for Proposals/Bids or the Response thereto, the terms and conditions of this Contract as well as any amendment shall take precedence and control the relationship and understanding of the parties.

20. Contracting With Locally Owned Small Businesses. The Provider shall take affirmative action to utilized Locally Owned Small Businesses when possible as sources of supplies, equipment, construction and services.

21. Incorporation Of Whereas Clauses. The foregoing whereas clauses are hereby incorporated into this Contract and made a part hereof.

22. Waiver of Proprietary Interest. Notwithstanding anything to the contrary contained herein or within any other document supplied to County by the Provider, Provider understands and acknowledges that County is a governmental entity subject to the laws of the State of Tennessee and that any reports, data or other information supplied to County by Consultant due to services performed pursuant to this Contract is subject to being disclosed as a public record in accordance with the laws of the State of Tennessee.

23. Organization Status and Authority. (a) Provider represents and warrants that it is a corporation, limited liability company, partnership, or other entity duly organized, validly existing and in good standing under the laws of the state of Tennessee; it has the power and authority to own its properties and assets and is duly qualified to carry on its business in every jurisdiction wherein such qualification is necessary.

(b) The execution, delivery and performance of this Contract by the Provider has been duly authorized by all requisite action and will not violate any provision of law, any order of any court or other agency of government, the organizational documents of the Provider, any provision of any indenture, agreement or other instrument to which the Provider is a party, or by which the Provider's respective properties or assets are bound, or be in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or asset

24. Warranty. Provider warrants to County that all Services shall be in strict compliance with the terms of this Contract, and all applicable governmental laws, rules and regulations.

25. Rights in Data. The County shall become the owner, and the Provider shall be required to grant to the County, or its successors, a perpetual, non-exclusive, non-transferable, royalty-free right, in the County's name, to use any deliverables provided by the Provider under this Contract, regardless of whether they are proprietary to the Provider or to any third parties.

26. Provider Responsibilities.

A. INDEMNIFICATION AND INSURANCE REQUIREMENTS

1. Responsibilities for Claims and Liabilities. (a) Provider shall indemnify, defend, save and hold harmless the County, and its elected officials, officers, employees, agents, assigns, and instrumentalities from and against any and all claims, liability, losses or damages—including but not limited to Title VII and 42 USC 1983 prohibited acts—arising out of or resulting from any conduct; whether actions or omissions; whether intentional, unintentional, or negligent; whether legal or illegal; or otherwise that occur in connection with or in breach of this Contract or in the performance of the duties hereunder, whether performed by the Provider its sub-providers, agents, employees or assigns. This indemnification shall survive the termination or conclusion of this Contract.

(b) Provider expressly understands and agrees that any insurance protection required by this Contract or otherwise provided by the Consultant shall in no way limit the responsibility to indemnify, defend, save and hold harmless the County or its elected officials, officers, employees, agents, assigns, and instrumentalities as herein provided.

(c) The County has no obligation to provide legal counsel or defense to the Provider or its sub-providers in the event that a suit, claim or action of any character is brought by any person not party to this Contract against Provider as a result of or relating to obligations under this Contract.

(d) Except as expressly provided herein, the County has no obligation for the payment of any judgment or the settlement of any claims against the Provider as a result of or relating to obligations under this Contract.

(e) Provider shall immediately notify the County, c/o Shelby County Government, Contracts Administration, 160 N. Main Street, Suite 550, Memphis, TN 38103, of any claim or suit made or filed against the Provider or its sub-providers regarding any matter resulting from or relating to Consultant's obligations under this Contract and will cooperate, assist and consult with the County in the defense or investigation thereof.

2. Insurance Requirements. Provider will provide evidence of the following insurance coverage:

PROFESSIONAL SERVICES/CONSULTANT PROJECTS LESS THAN \$1,000,000

Minimum Limits of Insurance

Consultant/provider shall maintain coverage with limits of no less than:

- 1) *Commercial General Liability Insurance* \$1,000,000 limit per occurrence bodily injury and property damage/\$1,000,000 personal and advertising injury/\$2,000,000 General Aggregate/\$2,000,000 Products-Completed Operations Aggregate. Shelby County shall be names as additional insured. The insurance shall include coverage for the following:
 - a) Premises/Operations
 - b) Explosion, Collapse, & Underground property coverage
 - c) Products/Completed Operations
 - d) Contractual
 - e) Independent Contractors
 - f) Broad Form Property Coverage
 - g) Personal Injury
- 2) *Business Automobile Liability Insurance* - \$1,000,000 each accident for property damage and personal injury. Coverage is to be provided on all:
 - a) Owned/Leased Autos
 - b) Non-owned Autos
 - c) Hired Autos
- 3) *Workers Compensation and Employers' Liability Insurance* - Workers Compensation statutory limits as required by Tennessee. This policy should include Employers' Liability Coverage for \$500,000 per accident.
- 4) *Professional Liability Insurance* - \$1,000,000 per claim/\$3,000,000 annual aggregate. Indicate if coverage is on occurrence basis or claims-made.

All policies will provide for 30 days written notice to Shelby County of cancellation or material change in coverage provided.

B. Right to Monitor and Audit

Access to Records. During all phases of the work and services to be provided hereunder the Provider agrees to permit duly authorized agents and employees of the County, to enter Provider's offices for the purpose of inspections, reviews and audits during normal working hours. Reviews may also be accomplished at meetings that are arranged at mutually agreeable times and places. The Provider will maintain all books, documents, papers, accounting records, and other evidence pertaining to the fee paid under this Contract and make such materials available at their offices at all reasonable times during the period of this Contract and for three (3) years from the date of payment under this Contract for inspection by the County or by any other governmental entity or agency participating in the funding of this Contract, or any authorized agents thereof; copies of said records to be furnished if requested.

XI. PROPOSAL SUBMISSION

A. GENERAL

1. All interested and qualified Proposers are invited to submit a proposal for consideration. Submission of a proposal indicates that the Proposers has read and understands this entire RFP, including all attachments, exhibits, schedules, and addenda (as applicable) and all concerns regarding this RFP have been satisfied.
2. Proposals must be submitted in the format described below. Proposals are to be prepared in such a way as to provide a straightforward, concise description of capabilities to satisfy the requirements of this RFP. Expensive bindings, colored displays, promotional materials, etc. are neither necessary nor desired. Emphasis should be concentrated on conformance to the RFP instructions, responsiveness to the RFP requirements, and on completeness and clarity of content.
3. Proposals must be complete in all respects as required in this section. A proposal may not be considered if it is conditional or incomplete.
4. **Hard copy proposals must be received by no later than 3:00 pm (CST) on March 20, 2008, at Shelby County Government Purchasing Department, 160 N. Main St., Suite 550, Memphis, TN 38103.**
5. Proposers agree to provide County with any additional information it deems necessary to accurately determine ability to perform the services proposed. Furthermore, submission of this proposal constitutes permission by this organization for the County to verify all information contained in the proposal. Failure to comply with any request for additional information may disqualify this organization from further consideration. Such additional information may include evidence of financial ability to perform.

B. PROPOSAL PRESENTATION

1. One (1) original copy (clearly identified as original) and eight (8) copies of the proposal are required.
2. The package containing the original must be sealed and marked with the Proposers name and **"RFP #08-002-52, "COMPUTER CONSULTANT SERVICES" with due date and time indicated.**
3. Proposals must be in ink. Erasures and "white-out" are not permitted. Mistakes may be crossed out, corrections typed adjacent and initialed in ink by the person signing the proposal. Please identify all attachments, literature and samples, etc., with your firm name and our bid number.

4. Proposals must be verified before submission as they cannot be withdrawn or corrected after being opened. The County will not be responsible for errors or omissions on the part of bidders in making up their proposals. A responsible officer or employee must sign proposals. Tennessee sales tax shall not be included in the Consultant's proposal.

C. PROPOSAL FORMAT

Response to this RFP must be in the form of a proposal package that must be submitted in the following format. **Please download the attachment to this document.** The Proposal Response Sheet and Utilization Report (*required documents*) should be the first two pages of your written response.

1. Cover Page – Submit on letterhead stationary, signed by a duly authorized officer, employee, or agent of the organization/firm
2. Utilization Report (Separate Attachment Form)
3. Comprehensive Response
 - a. Outline of how respondent can meet or exceed the minimum requirements
 - b. Detail of how the respondent is qualified to provide the services required
 - c. A detailed description of the approach for accomplishing the services
4. Cost and Fees
 - a. Provide the applicable itemized fees and any commissions included in the proposal for the Services for each element in the scope of work (this includes a break-down of the cost proposed for any sub-consultant working in conjunction with your organization on the project).
 - b. Explain any assumptions or constraints in a price proposal to perform the services.
 - c. Explain any additional charges or fees in the proposal.
5. Experience of the Respondent.

A sufficient description of the experience and knowledge base of the Proposers to show the Proposers capabilities should be included in the Proposal. At a minimum, the description of the experience and knowledge base of the Proposers included in the Proposal should include, but not necessarily be limited to, the following:

- a. A brief description of the history and mission of the Proposers, including the Respondent's background and mission statement, the length of time the Proposers has been in business, a description of the Proposers organizational structure and a description of the Proposers customer make-up;

- b. A statement of how long the Proposers have provided services similar to the Services requested herein;
- c. A general description of the Proposers experience and background in providing services similar to the Services requested herein;
- d. Any other relevant information about the experience and knowledge base of the Proposers which is deemed to be material.
- e. Resume of each employee engaged in the services, including the role of each and an overview of their previous experience with similar projects.

6. References

References of the Proposers, including at least three (3) other clients for whom the Proposers has provided services similar to the Services (with preference given to clients comparable to Shelby County Government) and, for each such reference, the business name, the identification of a contact person, the title of the contact person and a telephone number;

7. Additional Information

- a. A description of any other resources available to the Proposers that will be useful in providing the Services;
- b. Any other relevant information about the capabilities of the Proposers deemed to be material.

XII. PROPOSAL EVALUATION AND SELECTION

A. EVALUATION PROCESS

- 1. Initial Review – All proposals will be initially evaluated to determine if they meet the following minimum requirements:
 - a. The proposal must be complete, in the required format, and be in compliance with all the requirements of the RFP.
 - b. Proposers must meet the Minimum Proposers Requirements outlined in Section II of this RFP.
- 2. Technical Review- Proposals meeting the above requirements will be evaluated on the basis of the following criteria:
 - a. Each proposal will be reviewed by a special Ad-Hoc Committee assembled by the Administrator of Human Resources which may elect to schedule a personal presentation and interview with one or more of the bidders. After the review process is completed, this committee will recommend the successful bidder to the Division

Director, Finance and Administration, who makes the decision, subject to the approval of the contract by the Mayor and the Board of County Commissioners.

b. All proposals submitted in response to this RFP will be evaluated based on the following criteria:

- i. Qualifications of personnel.
- ii. Ability to present a clear understanding of the nature and scope of the project.
- iii. Project methodology.
- iv. Previous experience with similar projects.
- v. Cost to the Shelby County Government as outlined in the budget estimate.
- vi. Time frame for completion.

3. Oral Presentation.

The Shelby County Government reserves the right to interview, or require an oral presentation from, any respondent for clarification of information set forth in the Proposers response. In this regard, at the discretion of the evaluation committee, some or all Proposers who submit an Proposal in response to this RFP may be asked submit to an interview or give an oral presentation of their respective Proposals to the evaluation committee. If so, this is not to be a presentation restating the Proposal, but rather an in-depth analysis of certain qualifications of the Proposers. The interview or oral presentation, if utilized, is intended to provide an opportunity for the Proposers to clarify or elaborate on its qualifications without restating the Proposal. The interview or oral presentation is to be a fact finding and explanation session only and is not to be used to negotiate any terms of contract. If required, the time and location of such interview or oral presentation will be scheduled by the Administrator of Purchasing. Interviews and oral presentations are strictly an option of the Shelby County Government or its evaluation committee and, consequently, may or may not be conducted. All travel expenses to and from the interview or oral presentation shall be the responsibility of the Proposers.

Selection will be based on determination of which proposal best meets the needs of the County and the requirements of this RFP.

Shelby County Government reserves the right to consider the vendor's EOC rating in all evaluations.

B. CONTRACT AWARD

Contract(s) will be awarded based on a competitive selection of proposals received. The contents of the proposal of the successful Proposers will become contractual obligations and failure to accept these obligations in a contractual agreement may result in cancellation of the award. The County reserves the right to negotiate any portions of the successful Proposers fees and scope of work or utilize their own resources for such work.

Item #: 27

Prepared By: Marcy N. Ingram

Commissioner: MALONE

Approved By: _____

ORDINANCE NO. 328

AN ORDINANCE TO AMEND CHAPTER 12, CODE OF
ORDINANCES, SHELBY COUNTY GOVERNMENT, SO AS TO
ESTABLISH A LIVING WAGE STANDARD

WHEREAS, A Civil Service Merit System for employees of Shelby County was established by the Private Acts of 1971, Chapter 110 § 1; and

WHEREAS, It is important to the health and welfare of all residents of Shelby County that working people are paid a wage that enables them to lift their families out of poverty; and

WHEREAS, The County awards taxpayer-funded contracts to businesses to provide services to the public and to the County government; and

WHEREAS, The purpose of this Ordinance is to ensure that Shelby County Government as well as businesses receiving service contracts from the County pay employees a living wage.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE, That

SECTION 1. Chapter 12, Code of Ordinances, Shelby County Government, be amended so as to create the following:

Chapter 12
Employees

Art. V Living Wage

12-113 --- 12-125

ARTICLE V – Living Wage

Section 12-113. Definitions:

For purposes of this article, the following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Contractor means any person that enters into a service contract with the county.

County means Shelby County Government, including those County departments, which exercise independent control over their expenditure of funds.

Director means the Director of the Division of Administration and Finance and/or his or her designee.

Employee means all persons employed by the County, including but not limited to, classified, unclassified, seasonal workers, law/judicial clerks, miscellaneous

temporary workers or any person who is employed full-time, part-time, or on a temporary basis as a service employee of a contractor or subcontractor on a County service contract. This term is subject to the exemptions set forth in §12-122.

Employer means any person, company or corporation that employs two or more employees at any one time within a calendar year and who is a contractor or subcontractor provided, however, that corporations organized under Section 501(c)(3) of the Internal Revenue Code of 1965, 226 U.S.C. §501(c)(3) shall be exempted as to all employees other than child care workers.

Health benefits mean comprehensive family medical coverage in which the Employer contributes a minimum of fifty percent of the employee health benefits costs.

Living Wage means either:

- a. One hundred and four percent of the federal poverty level for a family of four, divided by 52 weeks per year x 40 hours of work per week. In 2007 the wage level equals \$10.02 per hour; or
- b. One hundred and twenty percent of the federal poverty level for a family of four without health benefits, divided by 52 weeks per year x 40 hours of work per week. In 2007 the wage level without benefits equals \$12.01 per hour.

RFP means any proposal and/or sealed bid requested by the County.

Service Contract means a contract awarded to a contractor by the County primarily for the furnishing of services to or for the County (as opposed to the purchase of goods or other property or the leasing of property). Service contract includes subcontracts but does not include any contract, whether or not a subcontract, which: (1) involves only the purchase of goods; (2) involves services provided primarily by student interns; (3) is a contract in existence prior to the effective date of this article; or (4) is a contract with a school district, municipality or other unit of the government.

Subcontractor means any person, not an employee, that enters into a contract with a contractor (and that employs for such purpose) to assist the contractor in performing service contracts.

Section 12-114. Living Wage Applicable to Employees of Shelby County Government, Service Contracts and Service Contractors

All employees shall receive a Living Wage as defined in this article.

All persons/entities engaged in service contracts, including but not limited to both prime and subcontractors, with the County shall pay a Living Wage for all work done pursuant to the service contract.

Section 12-115. Annual Adjustment of Living Wage

- a. The Living Wage rate shall be modified annually as of July 1 to incorporate the adjustments, if any, made to the federal poverty level income. Such annual adjustment shall take effect automatically every year, absent an affirmative vote by a majority of the County Commission to suspend the adjustment for that year.
- b. The Living Wage rate for employees of service contractors shall be modified in accordance with the date the RFP is issued, and such RFP will contain the actual rate (in dollars per hour, with and without benefits) which applies for that RFP.
- c. In the case of contract renewals, the Living Wage rate applicable as of the date of the renewal shall be the effective Living Wage rate.

Section 12-116. Monitoring and Enforcement.

- a. The Director shall monitor compliance with this law and may contract with non-governmental agencies to investigate possible violations.
- b. The Mayor or his or her designee may promulgate rules to the Director.
- c. The Director shall submit an annual report to the Mayor and the County Board of Commissioners summarizing and assessing the implementation of and compliance with this new law during the preceding year.
- d. Any contractor/service provider subject to the terms of this Ordinance shall, within five business days, make available upon request by the Director any and all payroll records, including hourly wages of individual employees, as needed to verify compliance with the terms and conditions contained herein.
- e. Upon receipt of any complaint of non-compliance, whether complaint is made by the Administration and/or affected employee(s), the Director shall request from the contractor/service provider documentation to verify compliance with the terms of this Ordinance contained herein. The contractor/service provider shall submit a statement of compliance certified by penalty of perjury.
- f. Service contracts under \$25,000.00 are not required to be monitored for compliance, however violations reported will be investigated and upon the validation of the complaint will be subject to the penalties as defined in Section 12-120.

Section 12-117. Required records

- (a) Contractor to submit.

For each service contract, the service contractor shall submit appropriate documents verifying compliance with this Ordinance, as set out in the RFP. Each RFP shall specify the necessary documentation and verification procedures.

- (b) Contents.

The verifying documents shall include the following information, only as it pertains to the county service contract:

- (1) The name of the prime service contractor and any subcontractor;
- (2) A designation of the project and location; and
- (3) Such other data as may be required by the Director from time to time.

- (c) Prime contractor responsible for subcontractors.

The prime service contractor shall be responsible for the submission of all subcontractors' payrolls covering work performed.

- (d) Signed statement of compliance certified by penalty of perjury.

Each verifying document shall be accompanied by a statement signed by the contractor or subcontractor, as the case may be, indicating:

- (1) that the information contained is correct;

- (2) that the wage rates contained therein are not less than those established by this ordinance as set forth in the contract; and
- (3) that the service contractor has complied with the provisions of this article.

Section 12-118. Article to be applicable to new service contracts.

The provisions of this article pertaining to service contracts shall ONLY apply to service contracts with Shelby County Government for which the RFP is issued after the effective date of this article.

Section 12-119. Retaliation and Discrimination Barred.

It shall be unlawful for any employer to retaliate, discharge, demote, suspend, or take adverse employment action in the terms and conditions of employment or otherwise discriminate against any employee for reporting or asserting a violation of this law, for seeking or communicating information regarding rights conferred by this law, for exercising any other rights protected under this law, or for participating in any investigatory or court proceeding relating to this law. This protection shall also apply to any employee or his or her representative who in good faith believes this law applies.

Taking adverse employment action against a covered employee(s) or his or her representative within sixty days of the covered employee engaging in any of the abovementioned activities shall raise a rebuttable presumption of having done so in retaliation for those activities. A covered employee subjected to any action that violates a subsection may pursue administrative remedies or bring a civil action against the offending party in a court of competent jurisdiction.

Section 12-120. Penalties.

- (a) Debarment (or ineligibility) for three years.

In the event the Director determines that any service contractor has failed to pay the Living Wage rate or has otherwise violated the provisions of this article, he or she shall notify the service contractor of the violation and give the contractor ninety days to get into compliance, including the payment of restitution to all affected employees in the form of back pay owed. If the service contractor does not comply with these requirements, the Director shall then cancel the contract and debar the contractor for a period of three (3) years.

- (b) Civil remedies.

- i. If the Director determines that the violation was willful, the Director shall cancel the contract, require the contractor to pay affected employees restitution in the form of back pay owed within ninety days and debar the contractor for a period of no less than three years. In the event that the service contractor, who has willfully violated the provisions of this article, fails to pay restitution to its affected employees, Shelby County Government reserves the right to pursue civil remedies, up to and including remedies for treble damages, against such service contractor for breach of contract.
- ii. In the event that any contractor/service provider fails to pay its affected employees restitution, the provisions of this Ordinance do not create a private right of action against Shelby County Government for such contractor/service provider's violation of the provisions herein.

Section 12-121. Memorandum of Understanding ("MOU")

Parties subject to this article may, by the labor organization agreement, provide that such agreements shall supersede the requirements of this article.

Section 12-122. Exemptions

The following are not covered employees for purposes of this article:

- (1) A person who provides solely volunteer services that are uncompensated, or otherwise compensated by a nominal fee, except for reimbursement of expenses such as meals, parking, or transportation, and election day officers assigned to precincts on election day which include Officers of Election, Judges, Inspectors, Precinct Registrars, Assistant Precinct Registrars and Machine Operations; and
- (2) A person employed in construction work that is subject to the provisions pursuant to any legally recognized Prevailing Wage standard; and
- (3) Any and all employees in the Hospitality industry, including but not limited to, any and all employees working for restaurants and limited and full-service hotels and lodging establishments within the city limits of Memphis and Shelby County.
- (4) Any person employed pursuant to an emergency contract. For purposes of this Ordinance, the term emergency contract will be defined in the same manner in which it is defined by the provisions outlined in the Shelby County Government Purchasing Policy, as it may be amended from time to time.
- (5) Any and all employees who hold a professional license issued by the State of Tennessee, in medicine, law, engineering, architecture, landscape architecture, and accounting;
- (6) A person employed by or as a financial or swap advisor, underwriter, counsel, securities broker or dealer, transfer agent, trustee, paying agent, rating agency, bond insurance company, dealer, escrow agent, liquidity facility provider, information or securities repository, remarketing agent, swap counterparty or tender agent in connection with the issuance of debt by the county, including bonds, commercial paper, swaps and notes.
- (7) Any person under the age of 18; and
- (8) Any person participating in any Student Internship.
- (9) Any Locally Owned Small Business (LOSB) as defined by the LOSB Ordinance of Shelby County, Tennessee, with ten employees or less.

Sections 12-123 -- 125. Reserved.

SECTION 2. BE IT FURTHER ORDAINED, That the provisions of this Ordinance are hereby severable. If any of these sections, provisions, or sentences, clauses, phrases or parts is held unconstitutional or void, the remainder of this Ordinance shall continue in full force and effect.

SECTION 3. BE IT FURTHER ORDAINED, That this Ordinance shall take effect beginning July 1, 2007.